

# UNDERSTANDING ADDITIONAL INSURED, WAIVER OF SUBROGATION AND PRIMARY / NON CONTRIBUTORY

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## WHAT ARE YOU SIGNING?

When you are working as a subcontractor, signing contracts are a fact of life. If you haven't seen or signed a contract yet, it's only a matter of time. A typical subcontractor agreement will have two obligations that your business is agreeing to:

1. An Indemnity Clause
2. Insurance Requirements and Limits

## The Indemnity Clause

The indemnity clause is language in a contract which states that a party to the contract agrees to compensate the other party for any losses incurred as a result of the performance of the contract or in association with the contract.

When you sign a subcontractor agreement that includes an indemnity clause, you the subcontractor are agreeing to defend and compensate the general contractor for any harm, liability, or loss arising out of your work whether your insurance policy covers it or not.



# Insurance Requirements and Limits

The purpose of insurance requirements and limits in the subcontractor agreement are to provide a means to pay for potential losses and to satisfy the obligation of the indemnification clause. In other words this guarantees that there sufficient source of funds to pay for any loss caused by your operations on behalf of the general contractor.

Very simply, the intent is that your insurance will pay for a potential loss so that you or your business does not have to pay for a loss out of your own pocket.

Two common requirements are the Additional Insured Endorsement and the Waiver of Subrogation.



## Additional Insured and Waiver of Subrogation Requirements

When a subcontractor's policy has added the general contractor on as an additional insured, it allows the insurance of the subcontractor to pay out on behalf of the general contractor.

The general contractor now has insured status on the sub's policy. This means the general can be defended by the subcontractor's insurance when fully or partially at fault. This is a requirement in most contracts and protects both the subcontractor and the general contractor.

Most additional insured forms will cover ongoing operation, but because there is still exposure to loss long after the subcontractor has left the jobsite, it is also important for the general contractor to request that they are named additional insured for products and completed operations.





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## Waivers of Subrogation

A waiver of subrogation is the subcontractor's insurance carrier agreeing to waive their right to subrogate a claim. In other words, they will not pursue the general contractor or their insurance carrier for any compensation after a loss or defense has been paid.

When paired with the additional insured status, risk is transferred from the general contractor to the subcontractor's insurance policy as it limits the right of the insurance company to subrogate against the general contractor for their portion of fault.

## Primary / Non Contributory


Primary / Non Contributory language can be found on an additional insured form or can also be a separate endorsement. When the general contractor is an additional insured on their subcontractor's policy, the intention is for their [subcontractor's] policy to pay claims caused by the subcontractor. This endorsement is like it sounds... it establishes that the subcontractor's policy is the primary policy, meaning it will pay first up to the limits before other insurance is sought to pay on a claim and it states the insurance company for that policy will not ask or attempt to have the general contractor's insurance policy contribute to the loss.



## In Summary

If you as a subcontractor are the cause of a loss, it's likely the general contractor will be brought into the claim as well. The intentions of the endorsements mentioned above are to remove the general contractor from this equation and shift the onus of defending a claim and paying for a loss on the subcontractor's insurance policy. If these endorsements are required in a contract that has indemnity language it is important that a subcontractor provide them as required to avoid a breach of contract and possible out of pocket expenses. If you found you have this gap or exposure with one builder, there is a possibility you have it with other builders who have indemnity language in their contract with similar insurance requirements. If this is the case you would want to address and fix the matter with them as well.



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